82-561

Docket No.

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ALEXANDER L. STEVAS,
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In the Supreme Court of the United States

October Term, 1982

JESSE J. JOHNSON
Petitioner

vs

CLIFFORD ALEXANDER, JR.,
in his official capacity as Secretary of the Army;
The United States Department of the Army,
and his agents, assigns and successors in office.
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JESSE J. JOHNSON
41 Cornelius Drive
Hampton, VA 23666
804-838-1244
PETITIONER, PRO SE

QUESTIONS PRESENTED

1. Whether Norfolk federal District Court Judge Richard B. Kellam who displays upon the wall of his chamber in a federal tax supported building a picture of Robert E. Lee with cross confederate flags of the Confederate States of America which fought a war to protect "...the institution of slavery..." and "for...the right to property in Negro slaves..." subjected petitioner, a Black citizen and an involuntarily retired federal government employee from Fort Eustis, Virginia to inherent violations of due process under the 5th amendment to the U. S. Constitution and to inherent violations of due process and unequal protection under the 13th, 14th and 15th amendments of the U. S. Constitution wherein he denied petitioner promotion to Education Specialist GS 1710-12 and denied injunctive relief.

(Petitioner does not remember seeing a picture of the U. S. flag in the judge's chamber.)

2. Whether appointing U. S. Federal District Judge Richard B. Kellam who displays unlawfully the picture of Robert E. Lee on cross confederate flags in his chamber in a federal tax-supported building in the District Court, Norfolk Division, in Virginia is one of the reasons petitioner was denied promotion to Education Specialist GS 1710-12 and whether this subjected petitioner to inherent violations of due process under the 5th and 14th U. S. constitutional amendments and to inherently unequal protection under the 13th, 14th and 15th amendments of the U. S. Constitution.

3. Whether not appointing any Black federal District judges since 1789 and/or more impartial white judges

by U. S. Senators in Virginia has subjected the Black petitioner to continuing, systematic, intentional race discrimination for 13 years; denied promotions, transfers, human dignity and injunctive relief for 13 years and subjected petitioner to inherent violations of due process under the 5th and 14th amendments of the U. S. Constitution and to unequal protection under the 13th, 14th and 15th amendments to the U. S. Constitution.

4. Whether the continuous denial of injunctive relief by the District Court, Eastern District of Virginia, by the Civil Service Commission, by the Equal Employment Opportunity Commission and by the Secretary of the Army, his agents and assigns to prevent continuous intentional, systematic race discrimination daily for 13 years against the Black petitioner, subjected him to

inherent violations of due process under the 5th and 14th amendments and inherently unequal protection under the 13th and 14th amendments of the U. S. Constitution and whether this denial was one of the reasons petitioner was not promoted to Education Specialist GS 1710-12, nor to Equal Employment Opportunity Officer GS 160-12 in 1976.

5. Whether the Federal District Court, Eastern District of Virginia, Norfolk Division, or the Fourth Circuit Court should require the Secretary of the Army to promote petitioner to Education Specialist GS 1710-12 or to Equal Employment Opportunity Officer, GS 160-12 or equivalent, under authority of Shaw vs Library of Congress without a formal finding of race discrimination (F Supp 479, 945-950, US DC, DC) or by such authority as exists by law.

6. Whether the court below

denied petitioner due process of law and denied equal protection guaranteed by the U. S. Constitution when it decided that petitioner failed to establish a prima facie case of racial discrimination against petitioner in violation of Title VII, 42 U.S.C. 2000e et seq, conforming to the standard of McDonald Douglas v. Green.

7. Whether the District Court made reversible error in accepting a surprise, undocumented, rigged allegation, before administrative exhaustion, of petitioner's alleged napping in office by hostile discriminating witnesses to deny petitioner's promotion to Education Specialist GS 1710-12 in violation of petitioner's rights under due process, equal protection under the 5th and 14th amendments of the U. S. Constitution. No witness had ever made such a verbal nor written allegation against petitio-

ner in 13 years, as required by the Army's own regulations. (CFR USC 5 Sect 7501 et Seq). (Fort Eustis Regulations TCFE 690-1 Chap 7, Sect IX and X.) NOTE: By the term inherent, petitioner means that due to his Black race, he inherited before, at, and since birth certain constitutional inequalities as a badge of slavery and that this inheritance has helped to deny petitioner equality of opportunity in promotions, injunctive relief, human dignity and inequality in all phases of life.

8. Whether petitioner who was forced to involuntarily retire in July 1980 from federal employment due to extreme, continuous, systematic, intentional and near-violent race discrimination at Fort Eustis, Virginia can now amend his original complaint of February 1980 to include paragraph 21 again so as to revive the allegation of compensatory

and punitive damages, back pay, and promotion under USC 42 Section 1981 and 1982 without being barred by Brown v. General Service Administration (425 US 820 (1976) which decided exclusive jurisdiction of Title VII for federal employees. Petitioner is now in the private sector.

9. Whether Judge Kellam's opinion and order in this case, due to bias and prejudice, so parallels the many deliberate mistatements of facts, distortions, and clear reversible abuses of discretion, etc., by the same court in 1972-76 so much so that it proves a racially biased and prejudiced pattern by the federal District Court, Norfolk Division, intentionally and continually engaging in practices, and abuses in the administration of Civil justice that deprives petitioner of his rights under the 5th, 13th, 14th and 15th amendments

of the U.S. Constitution thereby continually and intentionally denying petitioner injunctive relief, promotions, due process, and equal protection which resulted in the destruction of petitioner's career and emotional health and tranquility.

LIST OF ALL PARTIES

1. JESSE J. JOHNSON, Petitioner
2. CLIFFORD ALEXANDER, JR., As Secretary of the Army, the U.S. Department of the Army, and his agents, assigns and successors in office, Respondent

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TABLE OF AUTHORITIES

Alexander Gardner v Denver (415 US at 36, 48-49, 56 (1974)

Brown v Board of Education of Topeka Kansas (99 L. Ed. Oct 1954 term U.S. 348-349, 1083)

Brown v GSA 425 U.S. 820 1976.

Day v Matther 530 F 2d 1083 (DC Cir. 1976)

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Finch v Wallberg Dredging Co (1955) 76 Idaho 246, 281 p. 2d 136, 48ALR 2d Ct. 1150

Francis Haines v Otto J. Kench et al 404 US 519. 30 Led 2d 652, 92 S. Ct.963

Furnco Construction Corporation v Waters 438 U.S. 567 98 S. Ct. 2943 (1978)

Gibson v Mississippi 162 US 565, 591

Hill v Western Electric Co., Inc. 596 F 2d 99, 104 (4th Cir. 1979)

International Brotherhood of Teamsters v United States 431 US 324. 358 97 S. Ct. 1843 1866 (1977)

John Punch's Case in Virginia (July 1640) (Judicial Cases concerning American Slavery. H. T. Catteral)

Johnson v. Hampton 452 F Supp 1 (1977) (Petitioner's Personnel Case, 1977)

Joseph L. Jones et al v Alfred H. Mayer Co. et al 88 S. Ct. 2186 392 US 409; 20 Led 2d 1189, 1968

McDonald Douglas Corp. v Green 411 US 792 (1973)

Shaw v Library of Congress (F Supp 479, 945 950, USDC, DC 1980)

Slaughter House Cases, 16 Wall. 36 (1873)

Steele v Louisville and Nashville Railroad Co. 323 US 192, 198-199

Strauder v West Virginia 100 US, 300, 307-308 (1879)

US Supreme Court Reports 14 L ed 2d (381 US 131) (L. W. Holt v. Virginia)

US Supreme Court Reports 40 3 US 212, 29 L ed 423, 91 S. Ct. 1778 (R. Johnson v. Mississippi)

US Supreme Court Reports 30 L ed 708, 92 S. Ct. 659, 404 US 553 (L. Little v North Carolina)

US v Scivto 101 S. Ct. 568

US Fansansico v Legal Aid Society of San Diego Inc. CA Cal. 563-F 2d 1324

Virginia v Rines, 100 US 313, 318 (1879) Ex Parte, Virginia 100, US 339, 344-345 (1879) 25 L ed 676 (1880)

Williamson v Bethlehem Steel Corp. 468 F 2d 1201 (2nd Cir) 411 US 911 (1973)

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth Circuit affirmed the judgement below on the reasoning of the District Court for the Eastern District of Virginia, Norfolk Division, on April 20, 1982 (App. C). The District Court decision is App. L. Petition for rehearing denied on May 28, 1982 (App. D).

JURISDICTION

The opinion of the Court of Appeals for the Fourth Circuit was decided on April 20, 1982 (App. C). Rehearing was denied on 28 May 1982 (App. D). Petitioner was granted a 30-day extension of time by the Supreme Court of the U. S. (App. A and B). This timely petition was filed on 24 September 1982. Jurisdiction of the court: USC.28 Section 1254. Final decision of district courts.

CONSTITUTIONAL PROVISIONS INVOLVED:
UNITED STATES CONSTITUTION,
AMENDMENT FIVE:

1...No person shall be deprived of life, liberty, or property, without due process of law; ...nor without just compensation.

2. U. S. Constitution, thirteenth:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

3. U. S. Constitution fourteen, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

4. U. S. Constitution, fifteen, Section 1:

The right of a citizen of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of Servitude.

STATUTES

Civil Rights Act of 1964, as amended, by the Equal Employment Opportunity Act of 1972, 42 US Sct 2000e et seq. (Title VII, Section 706, and 717 Injunctive Relief)

5 CFR Administrative Procedures Act

5 CFR Grievance Procedures, Section 5701 et seq

28 USC, Section 144

28 USC Mandamus Act, Sect. 1361

28 USC Tucker Act 1346

29 CFR, Uniform Guidelines of Employee Selection Procedures (1978), Section 1607

42 USC, US Civil Rights Act of 1866, Section 1981

EXECUTIVE ORDERS

Executive Orders 11246, 11478, and 11590

REGULATIONS

Federal Personnel Manual, Chapter 335 (Promotion Regulations)

Code of Fed. Regulation 713, Equal Employment Opportunity Regulations (Army)

Fort Eustis Civilian Personnel Regulations TCFE 690-1 Chapter 7, Section IX and X

MISCELLANEOUS

CORPUS JURIS SECUNDUM Vol 48A, p 728, Section 108

American Law Reports annotated 48 ALR at 1166

A Study of Judicial Review in Virginia 1789-1928 by M. V. Nelson, Ph.D. 1947, Columbia University Press

H. R. Reports, No. 9 2-238 92d Congress 1st Session at 24 (1971)

S. Report No. 1-15, 92nd Congress 1st Session at 5, (1971)

A History of Virginia Conventions by J. N. Brenaman. Chapter on Debates 1901-02. pp. 91 ff. pp 117-307 (J. L. Hill Press, Richmond, VA 1902)

Judicial Cases Concerning American Slavery and the Negro. Carnegie Institute, Washington, D. C. 1926-27 by H. T. Catteral

Judicial Performance in the Fifth Circuit 73, Yale Law Journal 90 (1963)

Judicature, the Journal of American Judicature Society (May 1979, vol. 62 No. 10) The Senate and the Selection of Federal Judges (Article)

STATEMENT OF THE CASE

1. The petitioner seeks review of a decision of April 20, 1982, by the United States Court of Appeals for the Fourth Circuit, Richmond, Virginia. This decision affirmed the judgement below of 18 December 1980 by the United States District Court for the Eastern District of Virginia, Norfolk Division. (App. L)

2. A timely petition for rehearing was filed on 3 May 1982. Denied on 28 May 1982. (App. D)

3. This court has jurisdiction to review the judgement of the Court of Appeals by writ of certiorari under 28 USC Sect. 1254.

4. The jurisdiction of the District Court was invoked under Title VII of the Act of Congress known as "The Civil Rights Act of 1964" as amended by the

"Equal Employment Opportunity Act of 1972," 42 USC, Section 2000e et Seq, Section 706 and 717 of said Title VII providing for injunctive declaratory and other relief against racial discrimination in federal employment due to race; and Title 42 USC, Sect. 1981 and 1982.

It is also, under the fifth, the thirteenth and fourteenth and fifteenth amendments to the U.S. Constitution: Executive Order #11590 and as alleged in pro se complaint of 28 February 1980, including the Back Pay Act, and Administrative Procedures Act.

5. Petitioner applied for promotion to GS-12.About 10 years preceding his applications for promotion, at Fort Eustis, Virginia, to GS-12, petitioner had been employed at Fort Eustis, Virginia as Education Specialist GS 1710-09 and 11 in vacancy #300-76, with discriminatory exceptions. His duties

were centered on writing correspondence courses for home study by military service persons. Petitioner had also distinguished himself as a publisher of 6 books (12 editions). He had taught CCC camp boys in the education field in Michigan about 3 years; served nearly four years with military research in the Army; nearly 12 years in part-time legally related duties in the Army; three years as Assistant Professor of Military Science and Tactics at ROTC, Virginia State College, Petersburg, VA, and nearly three years with ROTC at Hampton Institute, VA where he retired in October 1962, and worked at Hampton Institute as a civilian nearly 5 years.

In addition, petitioner had been invited to speak to 1000 West Point cadets; testified before a Presidential Congressional Defense Manpower Commission in Washington, D. C. about four

times; spoke at educational institutions and later at the Army War College. Recently he has been filmed in a military documentary for national television. All the above was because of petitioner's books or military history. In addition, he had earned an AB degree, a MA degree in Education and an LLB degree in law by extension (correspondence) study for 3 years, while in the Army; a series of short military and civilian courses; and nearly 12 years Reserve Officers correspondence courses. He entered the Army as a private in October 1942 and retired as a Lieutenant Colonel in October 1962 (20 years) as one of less than 40 Black retired Lieutenant Colonels as of 1962 in all U. S. history.

Petitioner had a total of 30 years job-related training and experiences prior to application for promotion to GS-12 as a writer. Mr. Van Deren, (John, he) who

was promoted, had 1½ years with Civil Service, without any military experiences or job-related writing experiences. He was hired from a civilian education job. (See petitioner's personnel file as Agreed Exhibit #1 in tne record.

CIVIL SERVICE COMMISSION'S PROGRAM IMPEDED EQUAL EMPLOYMENT OPPORTUNITY; CONGRESS SAID; PETITIONER SUFFERED

6. The Civil Service Commission Equal Employment Opportunity practices, customs, and usages were "woefully inadequate," Congress said, between the 1890s and about January 1979, at which time EEO responsibilities were transferred to the Equal Employment Opportunity Commission (EEOC). Petitioner was denied relief under the CSC's inadequate policies between February 1966 and January 1979. The House Committee on Education and Labor reported, among

74. Whereas the central issue in this federal action is unconstitutional, intentional and systematic denial of promotion to Education Specialist GS 1710-12 in about January 1977 in vacancy 300-76 at Fort Eustis, Virginia due to race, violations of due process and equal protection, the promotion issue is inextricably interwoven, inseparably and unmistakably linked to unconstitutional past, continuing, systematic, intentional race discrimination, denial of injunctive relief and denial of promotions by the Norfolk federal District Court, tne Fourth Circuit Court, the Secretary of the Army, the Civil Service Commission, and the Equal Employment Opportunity Commission, and the Equal Employment Opportunity Commission for 13 years; and due to the denial or restriction of Black citizens from the general political life of Virginia, the appointment of

Conservative federal judges by the president of the United States, with the advice and consent of conservative senators from Virginia. The word, conservative, in this action, means that Black citizens and many white citizens' rights interests, sentiments, and views have not been and are not represented in the state-controlled voting procedures which selects federal judges. It is said that Virginia has the second lowest percentage of registered voters in the United States (Census Reports 1970, 1980).

.8. Defendants were found guilty of race discrimination in November 1972. As a result, he was reinstated from discriminatory RIF GS-07 to GS-11 and separation of nearly four years. However, defendants continued with increased retaliatory race discrimination on the first date of reinstatement and continued to date of forced retirement in

July 1980.

9. Petitioner was forced to complain every month in 1973 to Mr. Oben Johnson, Equal Employment Opportunity Officer, without relief; so, in January and February 1974 he was forced to reinstate the race discrimination complaint of 1972 due to contractual violations of agreement of January 1973 and continuing race discrimination which lasted until forced to involuntarily retire in July 1980. No person in authority would stop the daily discrimination to forced retirement in July 80.

REASONS FOR GRANTING THE WRIT

I. ARGUMENT FOR QUESTION #1

1. WHETHER FEDERAL DISTRICT COURT JUDGE RICHARD B. KELLAM WHO DISPLAYS UPON THE WALL OF HIS CHAMBER A PICTURE OF ROBERT E. LEE WITH CROSS CONFEDERATE FLAGS OF THE CONFEDERATE STATES OF AMERICA WHICH FOUGHT TO PROTECT "...THE INSTITUTION

OF SLAVERY..." AND "FOR...THE RIGHT TO PROPERTY IN NEGRO SLAVES..." SUBJECTED PETITIONER, A BLACK EMPLOYEE WHO INVOLUNTARILY RETIRED, TO INHERENT VIOLATIONS OF DUE PROCESS, EQUAL PROTECTION AND JUSTICE UNDER THE 5th, 13th, 14th and 15th AMENDMENTS TO THE U. S. CONSTITUTION WHEREIN PETITIONER WAS DENIED PROMOTION TO GS-12 AND DENIED INJUNCTIVE RELIEF.

(Brown v. Board of Education of Topeka, Kansas) (99 Law Ed. Oct 1954 term. U.S. 348-31-9, 1083) separate but equal"... educational facilities are "inherently unequal." Petitioner inherited certain judicial inequalities due to the badge of slavery.

2. In 1896, the Supreme Court stated... "...the constitution of the United States...forbids, so far as Civil and political rights are concerned, discrimination by the General Government or

by the state, against citizens because of race. (Gibson v Miss. 162 US 565, 591. Steels v Louisville and Nashville Railroad Co., 323 US 192 198-199.) Petitioner has suffered the Army's and CSC's permissiveness and discrimination for 13 years.

3. All racial discrimination is prohibited under the 13th amendment of the U.S. Constitution (Joseph L. Jones et al v. Alfred H. Mayer Col, et al, 392 US 409, 20 L. Ed. 2d, 1189, 1968) (88 S.C. 2186).

4. A flag is and has been for centuries a symbol of a source of inspiration; an inner expression of our feelings, attitudes, cultural ideals, and our preferential symbol for our national personality. The confederate symbol of slavery is void, unlawful and has no place under the national constitution and national personality nor in the

hearts or courts of the state or federal governments.

5. The Certiorari should be granted because the Court below had decided a question relating to the promotion of a Black federal employee in a way in which it conflicts with applicable decisions of this court in the midst of continuing bias and prejudice of the court below and of the Army.

6. The Supreme Court stated that discretion must be exercised in light of the large objective of Civil Rights Act (Hecht v. Bowles 321, US 321 331 (1944) (Albermarle Paper v Moody 422 US 405, 416 (1975).

7. Race discrimination...for several hundred years reaches into the past, the present and the future.

8. In addition, the District Court, Eastern District of Virginia, Norfolk Division, has intentionally, and system-

atically engaged in, and is continuing to engage in practices in the administration of Civil justice that deprives petitioner of his rights under the 5th, 13th, 14th, and 15th amendments of the U.S. Constitution, thereby continually denying petitioner promotions, injunctive relief, due process, equal protection, equal employment opportunity and human dignity.

9. This case goes beyond the limited issue of promotion to Education Specialist GS 1710-12 to certain inextricably interwoven inherent rights of the petitioner as alleged in the pro se complaint of February 80. It also involves the inextricably interwoven questions whether a District Court with a judge who displays the confederate symbol of slavery and which has never had a Black judge or perhaps racially impartial white judges, and the Army have continu-

ally, systematically and intentionally subjected petitioner to inherent violations of due process, inherently unequal protection and unequal justice in violation of the 5th, 13th, 14th and 15th amendment clauses of the U. S. Constitution, Executive Orders, laws, and regulations of the Army.

10. The display of Robert E. Lee's picture with cross confederate flags by Judge Richard B. Kellam on the wall of his chamber unlawfully in the federal District Court, tax-supported building, Eastern District of Virginia, Norfolk Division, is <u>irrefutable evidence per se</u> to this Black petitioner and to any impartial judge that he is <u>personally biased and prejudiced toward petitioner</u> and the Black race in this case of competition for promotion to GS-12 between a white and Black male for the same Civil Service position at Fort

Eustis, VA.

Judge Kellam's selection, as federal district judge, was unconstitutional; therefore petitioner has not had a constitutional trial.

> "Perhaps nowhere is the importance of judicial review better illustrated than in the testing of the very constitution itself. The (Virginia) Convention of 1901-02, after prolonged debate, decided to proclaim the constitution rather than submit it to the vote of the people for ratification. This was a doubtful policy and a break with tradition. Every constitution since that of 1776 had been voted upon by the people. But the Convention did not dare to submit for ratification by the old electorate a constitution which disfranchised part of it." (See: A History of Virginia Conventions by J. N. Brenaman. (J.LH.LL Press, Richmond /I9027 pg. 91 ft. chapter on debates. 1901-02, pp. 117-307)
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> "The primary objective in calling the Convention of 1902 was to eliminate the Negro from politics by imposing stringent suffrage qualifications."
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(A Study of Judicial Review in Virginia 1789-1928. By M. V. Nelson, Ph.D. 1949. Columbia University Press) Petitioner has been denied his constitutional rights as a citizen and as a federal government employee for many years.

xxxx

> "We may conclude by saying that the suffrage provisions of the Constitution of 1902 have resulted in eliminating the negro. The Convention did the State a great service when it removed the negro from politics and thus rendered the purification of the electorate possible." (The Virginia Constitutional Convention of 1901-1902 by Ralph C. McDaniel, Ph.D., University of Richmond, Johns Hopkins University Studies of Historical and Political Science.)

(All State imposed discrimination against the Negro race is unconstitutional denial of equal protection under the 14th amendment of the U. S. Constitution (Slaughter House cases, 16 Wall. 36 (1873) (Strauder v. West Virginia, 100 US 300, 307-308 (1879) Virginia v.

Rives 100 US 313, 318 (1879); Ex parte, Virginia, 100 US 339, 344-345 (1879) are inherently, inseparable.

11. The Confederate symbol of slavery means to the petitioner and to any impartial judge that petitioner should be in a demeaned status, segregated, humiliated; and without political rights, human dignity, employment rights in tax-supported jobs; denied due process, equal protection or equal justice; and denied injunctive relief against continuing, systematic, intentional race discrimination or be a slave.

12. The Confederate symbol of slavery speaks louder than words to this petitioner. As if spoken in court, it means also to the petitioner: "nigger," "coon" "boy," "girl," "sambo," "uncle," "auntie" "reverend," "preacher," and other demeaning, humiliating terms historically applied to petitioner and Black citizens.

The symbol is not one of love or respect.

13. The Confederate symbol of slavery is equivalent to a German Swastika flag in a court for a Jewish or French petitioner; or a U.S. flag in a confederate court during the Civil War, or to England's flag in court in the U. S. after Independence.

14. In addition to the confederate symbol of slavery, Judge Kellam's indifferent demeanor, stern attitude, unfriendly disposition toward petitioner indifference about equal employment opportunity; and his extreme friendliness and partiality toward all the white defendants, attorneys and witnesses; and obstruction of justices, is further evidence of personal bias and prejudice toward petitioner in addition to clear abuses of discretion during pre-trial and trial due to race of petitioner.

15. Moreover, the court granted defendants' attorneys two motions to extend time from November 6, 1980 to December 2, 1980 to allow attorney, Peter Lowenberg, time to go on his honeymoon. (App. H, I, J, and K.) and from October 17, 1980 to October 31, 1980 to reply to petitioner's motion to compile answers, to produce documents and for further admission; however he denied petitioner all motions for continuance for time to seek and orient another attorney or to dismiss the case without prejudice or cost to either party. There was no urgent or compelling reason to deny petitioner's motions, except race, bias and prejudice. This is clear abuse of discretion, bias and prejudice.

16. The judge's bias and prejudiced decision deliberately and intentionally diluted petitioner's trial transcript to help defendant. He ignored the prima

facie evidence of race discrimination presented in spite of his biased restriction, obstruction of justice and clear abuse of discretion. His opinion and order is saturated with bias and prejudice.

17. The American Heritage Dictionary of the English Language (1976) defines prejudice as "preconceived preference of idea: bias...hatred of a particular group, race, or religion."

18. Black's Law Dictionary defines bias as: "condition of mind...a judge unable to exercise his functions impartially in a particular case." (Evans v Superior Court in and for Los Angeles County, 107 Cal. App 372, 290 p. 662, 665. Maddox v State 32, Ga 587, 79 Am. Dec. 307; Pierson v State app. 558) to incline to one side. (Yarborough v Mallory 225 Ala. 579, 144, So, 447, 448)

19. Prejudice in Black Law Dictionary is defined as: "Forejudgement, bias, preconceived opinion. A leaning towards one side of a cause for some reason other than conviction of its justice. (Tegeler v State of Oklahoma 130 p. 1164, 1167, 9 Oklahoma Cir. 138.) Taylor v F. W. Woolworth Co. 146, Kan 841, 73 2d 110 2, 1103."

20. The following is what the confederate symbol of slavery unlawfully displayed in a federal building in a judge's chambers means officially: Quoting from the Confederate State of America's (CSA) constitution:

a. Article I, Section 8 of the CSA of America advocated: "...no bill of attainder, expost facto law; or law denying or imparing the right to property in negro slaves shall be passed."

b. Article III, Section 2 of the CSA constitution advocates: "no slave...

held in service or labor in any state or territory of the confederate states... shall be discharged from such service or labor..."

c. Further: "In all such territory, the institution of Negro slavery, as it now exists in the confederate states, shall be recognized and protected by Congress and by territorial government..."

21. Petitioner did not mention the confederate symbol of slavery at pretrial or during trial <u>because of fear of additional retaliation or charge of contempt</u>; or of extreme hostility during trial; because the confederate sentiment is very strong in Virginia and at Fort Eustis, Virginia as shown by the number of confederate flags on cars, etc., and as shown in the Virginia's state legislature and U. S. senator's extreme resistance toward the 1982 extension of

the Voting Rights Act. Petitioner sincerely hoped for miraculous justice.

22. In addition, petitioner's original attorney, the U. S. Assistance Attorney, the Army's Attorney, the court reporter, the vast majority of the District Court's officials and administrative staff are all of the white race; so to whom could a pro se Black plaintiff complain about the confederate symbol of slavery and bias and prejudice of the judge? No one. Can such a federal court ever dispense impartial justice to a Black complainant?

23. However, petitioner mentioned the confederate symbol on appeal to the Fourth Circuit; inferred in transcript and complaint. Denied. Trial in District Court was held on December 2, 1980; it was a year later before petitioner became aware of right to disqualify judges under both USC 28,

Section 144 and of the recently enacted Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, effective by Congress in October 1981. (Public Law 94-458, S. 1873).

24. Petitioner's fear of being charged with contempt or of extreme hostility by Judge Kallam was well founded: in a Virginia case, an attorney L. W. Holt was charged with contempt for filing a motion that the judge was biased and asked a change in venue; the case went through state courts to the U. S. Supreme Court:

> a. U. S. Supreme Court Reports 14 L ed 2d (381 US 131)
> L. W. Holt et al., Petitioners, v Commonwealth of Virginia. 381 US 131, 14 L ed 2d 290, 85 S Ct. 1375 (No. 464)
> Argued April 27 and 28, 1965. Decided May 17, 1965.

SUMMARY

"In contempt proceedings instituted

by a judge of the Circuit Court of the City of Hopewell, Virginia, against an attorney who had represented some of the defendants in a libel suit, the attorney filed a motion requesting the trial judge to disqualify himself from trying the contempt case, and after denial of this motion, filed a motion for change of venue, alleging in both motions bias on the part of the judge. Another attorney representing the first attorney in the contempt proceeding read this motion to the judge as part of his argument urging a change of venue. Both attorneys were adjudged guilty of contempt of court, and each was fined $50. Their convictions were affirmed by the Virginia Supreme Court of Appeals. (205 Va 332, 136 SE2d 809.)

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On certiorari, the Supreme Court of the United States reversed.

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b. Another Case: U.S. Court Reports

(403 US 212)

ROBERT JOHNSON, Petitioner,

v

STATE OF MISSISSIPPI

403 US 212, 29 L Ed 2d 423, 91 S Ct 1778

(No. 5485)

Argued April 21, 1971. Decided June 7, 1971.

SUMMARY

"The petitioner, a civil rights

worker, was charged with committing an act of criminal contempt in the Circuit Court of Grenada County, Mississippi, and the judge thereof ordered his removal from the court. The petitioner was ordered to appear at a later date to show cause why he should not be held in contempt, but before that hearing was held, the petitioner filed (1) a motion in the state court asking the judge to recuse himself and charging the judge with personal prejudice against the petitioner, the civil rights organization that he represented, and the lawyers' organization defending him, and (2) a petition in a Federal District Court for removal of the contempt proceedings.

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On appeal, the Supreme Court of Mississippi affirmed the judgement of contempt but reduced the petitioner's sentence from 4 months to 1 month. (233 So 2d 116.)

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On certiorari, the United States Supreme Court reversed and remanded. (U. S. Supreme Court Reports) 403 US 212, 29 L Ed. 423. 91 S Ct 1778)

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c. Larry Little's case relates to petitioner's case:

(404) US 553)
IN THE MATTER OF LARRY LITTLE,
Petitioner
404 US 553, 30 L Ed 2d 708, 92
S Ct 659
(No. 71-244)
January 24, 1972

SUMMARY

In a District Court in Fayette County, North Carolina, the petitioner was tried for carrying a concealed weapon. Prior to trial, the petitioner moved for a continuance because his attorney had another trial engagement in a different city, but the trial judge denied the motion and proceeded with the trial, and the petitioner acted as his own attorney. In his summation following the close of the evidence, the petitioner stated that the court was biased and had prejudged the case, and that the petitioner was a political prisoner. As a result of these statements, the trial judge held the petitioner in contempt and sentenced him to 30 days in jail as summary punishment. A North Carolina Superior Court denied the petitioner's request for habeas corpus, and the North Carolina Court of Appeals and the North Carolina Supreme Court denied review by certiorari.

On certiorari, the United States Supreme Court reversed. (US Supreme Court Reports 30 L Ed

708, 92 S Ct 659, 404 US 553).

d. Virginia has historically maintained two standards of justice for Black and white men. The John Punch case of 1640 illustrates Virginia's double standard:

RE Negro John Punch, July 1640, "Whereas Hugh Gwyn hath... Brought back from Maryland three servants formerly run away...the court doth therefore order that the said three servants shall receive the punishment of whipping and to have thirty stripes apiece one called Victor, a dutchman, the other a Scotchman called James Gregory, shall first serve out their times with their master according to their indentures, and one whole year apiece after the time of their service is Expired...and after that service...to serve the colony for three whole years apiece, and that the third being a negro named John Punch shall serve his said master or his assigns for the time of his natural life here or elsewhere." Judicial Cases Concerning American Slavery and the Negro. Carnegie Inst. Wash. D. C. 1926-27 By H. T. Catteral. Petitioner has reason to believe that if he were white, he would have been promoted to GS-12 on

on the same evidence.

e. "It appears, then, that in failing to invoke (USC 28) Section 144 (Bias and prejudice) Negroes and Civil Rights Litigants have neglected a potentially useful instrument for coping with hostile judges in Southern District Courts (see generally, NOTE: Judicial Performance in the Fifth Circuit. 73 Yale Law Journal 90 (1963)."

25. Petitioner had a right to a trial by an unbiased judge:

a. "The right to a judge free from bias or prejudice is based on due process clause of the federal constitution." (US v Scivto, 101 S Ct 568) "and on the constitutional right to a fair trial." (US v Scivto 101 St Ct 568) (CORPUS JURIS SECUNDUM Vol 48A, pp. 728, Section 108 1981 edition).

b. "Generally speaking, with respect to grounds for disqualification, a litigant is

entitled to a trial before a judge who is not biased or prejudiced." US--Fransansico v Legal Aid Society of San Diego, Inc CA Cal 563-F 2d, 1324). "It has also been stated... that the belief on the part of litigant that he cannot have a fair trial is sufficient grounds for disqualification...(of a judge)." (State ex rel. Agrivaris v Chappell. App. 344 So 2d, 925) (See also Mead Corp. v Adams Extract Co. 101 S. Ct 244 and US v Grinnell Corp. R. I. 86 S Ct 1698).

26. A few details are essential to completely understand why Judge Kellam was biased and prejudiced in denying petitioner continuances or dismissal. Petitioner was recovering from an operation of September 1980. Judge Kellam and the defendant's attorneys were <u>personal witnesses</u> to the fact

that petitioner's original attorney should have voluntarily withdrawn on 19 November 1980 at pre-trial conference in chamber or not have accepted the case because he told petitioner and the judge, for the first time, that it was ethically improper for him to have accepted petitioner's case because he stated that he is an active Reserve Lieutenant Colonel in the Army's Judge Advocate General's Corps (Lawyers) and cannot "represent a civil litigant...in a private action against the Secretary of the Army." (See pg 4 pre-trial transcript dtd 19 November 1980) (See also: Virginia State Bar Formal Opinion #182; ABA Formal Opinion #342) Petitioner asked him verbally to withdraw voluntarily. He refused to withdraw voluntarily, but withdrew based on the formal request of the petitioner. Petitioner was then, by surprise, pro se, because

the judge denied petitioner's motions for continuance to find and orient another attorney. There was no compelling reason for the judge to deny the motions, except Black race of petitioner. The court had already granted the defendant's attorney Peter Lowenberg two continuancies from November 20, 1980 to December 2, 1980 to accommodate the attorney Lowenberg's honeymoon, and from October 17, 1980 to October 31, 1980 so that defendant could reply to Demands for Documents, Admissions, etc., requested by petitioner. (App. H, I, J, and K)

27. Judge Kellam's denial of continuance was traumatic because in the same court, petitioner had been required to wait four years from September 1972 to October 1976 for trial when it was to the advantage of the same court to await a Supreme Court decision against him.

(Brown v GSA 425 US, 820, 1976) (Title VII exclusive Jurisdiction) When to petitioner's advantage, motions for continuances were denied by the same court. (App. F and G)

28. Petitioner asked Judge Kellam at pre-trial whether he could appeal his denials of motions as an interlocatory motion. In substance the answer was "No, not at this time." (See pre-trial Tr pp 4 and 5)

29. Petitioner wanted a change in venue, but being pro se, the procedure and right to change venue was not and is not now clear to petitioner.

30. Therefore petitioner had been defending himself, pro se, beginning with the pro se filing of the Complaint of February 1980 due to the ethically improper issue of his original attorney who accepted the case after it was filed pro se. Between February 1980 and

November 19, 1980, petitioner's original attorney had refused to prepare petitioner's case, leaving all research, writing, etc., to petitioner. He could not answer questions asked by Judge Kellam. The case was scheduled for 2 December 1980.

31. Being fully aware of these facts, the defendants' attorneys and Judge Kellam subjected this pro se petitioner to a more stringent standard than he applied to the defendant's attorneys for continuances, and his original attorney for preparation. This is unconstitutional because standards for pro se petitioners should be less stringent. Supreme Court decision: (Francis Haines v Otto J. Kerner, former governor of Illinois et al. 404 US 519; 30 L Ed 2d 652, 92 S Ct. 594 reh. den. 405. US 948, 30 L Ed 2d 819, 92 S Ct 963) Decided January 13, 1972. The

Supreme Court reversed the Seventh Circuit in this pro se case.

32. American Law Reports. Annotated. 48 ALR at 1166 states in favor of petitioner:

> Withdrawal of plaintiff's counsel
>
> In Finch v Wallberg Dredging Co. (1955) 76 Idaho 246, 281 P2d 136, 48 ALR2d 1150, it appeared that plaintiffs' attorneys, having represented plaintiffs for some time, voluntarily withdrew three days before the date set for the trial of a complicated case; that plaintiffs thereupon immediately engaged another attorney to represent them, but, because of other immediately urgent matters, as well as the complexity of the case, this latter attorney was unable to familiarize himself with the facts and the law of the case in the short interval of time before the trial date...the trial court summarily denied plaintiffs' motion for continuance and... since he had not been able to prepare for the trial in the short time allocated, the court again denied continuance...The reviewing court held that under the circumstances the trial court should in the exercise of its discretion have granted plaintiffs' motion for a continuance, and cited in support of its holding a number of Oregon cases...

II. ARGUMENT FOR QUESTION #2

1. WHETHER APPOINTING U. S. FEDERAL DISTRICT JUDGE, RICHARD B. KELLAM, WHO DISPLAYS THE CONFEDERATE SYMBOL OF SLAVERY ON THE WALL OF HIS CHAMBER, IS ONE OF THE REASONS PETITIONER WAS DENIED PROMOTION TO GS-12, AND WAS SUBJECTED TO INHERENT VIOLATIONS OF DUE PROCESS UNDER THE 5th AND 14th AMENDMENTS AND INHERENTLY UNEQUAL PROTECTION UNDER THE 14th AND 15th AMENDMENTS OF THE U. S. CONSTITUTION.

a. Judge Richard B. Kellam was politically selected to be federal District Court judge in about August/September 1967. He was recommended by senators from Virginia. Petitioner was hired at Fort Eustis in July 1967.

b. Black citizens, including petitioner, have been subjected historically to inherent violations

of due process, unequal protection and unequal justice. For example, Virginia's constitution of 1902 was unconstitutionally proclaimed at the Constitutional Convention of 1901-02, "rather than submit it to the vote of the people for ratification (Debates 1901-02 pp 117-307; 3100. 3260 See J. N. Brenaman. A History of Virginia Conventions (J. L. Hill, Richmond 1902) (pp 91)

c. "The primary objective in calling the convention of 1902 was to eliminate the Negro from politics by imposing stringent suffrage qualifications." (A Study of Judicial Review in Virginia 1789-1928 by M. V. Nelson Ph.D. Columbia University Press, 1947).

d. Since 1902, and earlier, Black citizens have been denied or restricted the right to vote to help select more impartial senators who could, in turn, select more impartial judges who'd disperse more impartial justice in federal courts in Virginia for Black and white people.

e. The close relationship between politics and selecting judges and denial of promotion of petitioner can be seen more clearly in the authentic Article by Mr. Larry Berkson in Judicature, the Journal of American Judicature Society (May 1979, Vol 62, No 10, which follows:

"The Senate and the Selection of Federal Judges

"Members of the Constitutional Convention of 1789, after considerable discussion, decided that the President should appoint judges with the advice and consent of the Senate."

"He (the President) shall have Power, by and with the Advice and consent of the Senate, to... appoint...Judges of the Supreme Court, and all other Officers of the United States, whose appointments are not herein otherwise provided for...but the Congress may by Law vest the appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

"From the very beginning, however, U. S. senators have played a dominant role in the process.

xxxx

"Out of these political realities grew the custom of "senatorial courtesy."

xxxx

"The practice originated during the first Congress. George Washington nominated Benjamin Fishbourn to a post in the Port of Savannah and, although he had excellent qualifications, the Senate rejected the nomination as a courtesy to the two Georgia senators who favored a different individual."

xxxx

"Until the past few decades all that a senator had to do to ensure the defeat of a presidential nominee (to a post within his state) was to declare that the nominee was "personally obnoxious" or offensive to him."

NOTE: A U. S. Senator from Virginia influenced not appointing the first Black federal judge in Virginia by President J. Carter in 1979/1980.

III. ARGUMENT FOR QUESTION # 3

1. WHETHER NOT APPOINTING ANY BLACK FEDERAL DISTRICT JUDGES OR MORE IMPARTIAL WHITE JUDGES IN VIRGINIA SINCE 1789 DUE TO RACIALLY DISCRIMINATORY DENIALS OR RESTRICTIONS IN THE POLITICAL PARTICIPATION OF BLACKS IN VIRGINIA'S STATE GOVERNMENT SUBJECTED PETITIONER TO INHERENT DENIAL OF PROMOTIONS, EQUAL OPPORTUNITIES, DUE PROCESS, AND EQUAL PROTECTION UNDER THE 5th, 13th, 14th and 15th AMENDMENTS OF THE U. S. CONSTITUTION.

a. No Black judges have ever been appointed by the U. S. president with the advice and consent of the U. S. senators from Virginia due to slavery, segregation and unconstitutional denial or restriction of Black people from voting, from petit and grand jury duties and from general political participation in the state government of Virginia during the entire history of Virginia, including the colonial era; this is inherently unequal. This is one of the reasons petitioner has not been promoted to GS-12 or higher for 13 years. Black people were first brought to the English-speaking colonies in 1619 at Jamestown, Virginia. (Brown v Board of Education of Topeka, Kan US 348, 349 at 1083)

2. A white male, Dean Rene Peters, complained that he had suffered unconstitutional discrimination because Black persons had been systematically excluded

from the grand jury that indicted him and the petit jury that convicted him. Similarly, petitioner is discriminatorily not fully represented in the Federal District Court, Eastern District of Virginia by race nor sentiment nor by impartial Black or white judges, nor by subordinate officials; therefore, petitioner has been subjected to inherently unequal judicial and constitutional protection for several centuries. Black clerks, administrative workers, etc. with Norfolk federal court are a shameful token, although thousands of Blacks have been locally qualified for many years.

a. (407 US 493)

DEAN RENE PEIERS, PETITIONER,

v

C. P. KIFF, Warden

407 US 493, 33 L Ed 2d 83, 92 S Ct 2163 (No. 71-5078)

Argued February 22, 1972. Decided June 22, 1972.

SUMMARY

A state prisoner, whose burglary conviction was affirmed by the Georgia Court of Appeals (115 Ga App 743), instituted habeas corpus proceedings in the United States District Court for the Middle District of Georgia, alleging for the first time that Negroes had been systematically excluded from the grand jury that had indicted him and from the petit jury that had convicted him. The District Court denied the petition, and the United States Court of Appeals for the Fifth Circuit affirmed on the ground that because the prisoner was not himself a Negro, he had not suffered any unconstitutional discrimination and thus his conviction must stand (441 F2d 370). The Supreme Court reversed and remanded.

3. Similarly in three landmark trilogy of cases regarding exclusion of Black citizens from grand and petit juries, the Supreme Court held generally that convictions by such juries is denial of constitutional equal protection, and

that injunctive relief is available "to vindicate these interests..."Petitioner is similarly situated. (407 US 500) See also Strauder v West Virginia, 100, US 303, 308-309, 25 L Ed 604, 665, 666 (1880); Virginia v Rives, 100 US 313, 25 L Ed 667 (1880); and Ex parte Virginia, 100 US 339, 25 L Ed 676 (1880). Many other courts in the U. S. have made favorable decisions on the issue of excluding Black citizens from juries. Petitioner should have as much protection due process and justice as a person who commits crime.

IV. ARGUMENT FOR QUESTION #4

1. WHETHER THE CONTINUOUS DENIAL OF INJUNCTIVE RELIEF BY THE EASTERN DISTRICT OF VIRGINIA, BY THE CIVIL SERVICE COMMISSION AND BY THE SECRETARY OF THE ARMY, HIS AGENTS AND ASSIGNS SUBJECTED PETITIONER TO 13 YEARS CONTINUOUS, SYSTEMATIC, AND INTENTIONAL RACIAL DISCRIMINATION

AND INHERENT VIOLATIONS OF DUE PROCESS, AND EQUAL PROTECTION UNDER THE 5th AND 14th AMENDMENTS TO THE U. S. CONSTITUTION AND HELPED TO DENY PETITIONER PROMOTIONS AND TRANSFERS. (App. F and G)

a. Petitioner has been continually, intentionally and systematically denied injunctive relief from continuous, intentional systematic race discrimination by the Army, Civil Service Commission, the Equal Employment Commission and by the Federal District Court, Eastern District of Virginia between July 1967 and July 1982. (App. F and G)

b. No person in authority would take command or firm action to stop the race discrimination. Although 3 court cases were filed and an array of EEO complaints were filed, no relief was ordered. Petitioner was forced to involuntarily retire in July 1980 due to excessive discrimination. The Army, the

CSC, the EEOC are the defendants, the investigator, the judge, the jury, and decision makers in EEO complaints. Petitioner suffered because, in part, evidence gathering, investigative procedures in EEO complaints are unconstitutional in that the complainant has no right to discovery or access to investigative file, or confrontation prior to final decision based on incomplete, distorted, undocumented, omitted statements. Hearing decisions are a sham. Continuing race discrimination is not fully recognized by the Army, CSC, or EEOC. These deficiencies were noted in Alexander Gardner v Denver Company. (415 US at 36, 48-49, 56, 1974), Cox v U. S. Gypum (409 F 2nd 289, 7th Cir 1969), Boudeaux v Baton Rouge Mine Construction Co. (437 F nd 1011 (5th Cir 1971) and Ettinger v Johnson (518 F nd, 648) (3rd Cir 1975). Petitioner suffered.

c. The Army and the Court also unconstitutionally denied petitioner promotion to Equal Employment Opportunity Officer GS 301-12 twice, although Best Qualified, according to an expert witness, Mr. Earl Woods, for vacancies #73-257 in December 1973 and vacancy #74-16 in February 1974 at Fort Monroe, Virginia and denied petitioner injunctive relief against continuing, systematic, and intentional race discrimination. (See App. F and G) United Air Lines v Evans and Trial Brief of Appeal and Petition for Rehearing En Banc with the Fourth Circuit. (CA #77-1656; CA #98-72 NN) and (CA 75-45NN) for summarized violations only.

V. ARGUMENT FOR QUESTION #5

1. WHETHER THE FEDERAL DISTRICT COURT EASTERN DISTRICT OF VIRGINIA, NORFOLK DIVISION OR THE FOURTH CIRCUIT SHOULD REQUIRE THE SECRETARY OF THE ARMY TO

PROMOTE PETITIONER TO EDUCATION SPECIALIST GS 1710-12 OR EQUIVALENT UNDER AUTHORITY OF SHAW v LIBRARY OF CONGRESS WITHOUT A FORMAL FINDING OF RACE DISCRIMINATION (F Supp 479, 945-950, USDC, DC). The Shaw case authorizes settlement without a formal finding of race discrimination, including back pay.

a. "The public policy favoring amicable settlement of all disputes to reduce tension between the parties and to reduce the workload of court operations with maximum force and effects in the context of employment discrimination. (United States Allegheny-Ludlum Industries, Inc. (517 F 2d, 826, 849-850 (5th Cir. 1975)."

b. An official Army Equal Employment Opportunity Investigation finding of race discrimination by defendants against petitioner, dated November 3, 1972, concludes as follows:

c. "The record reveals, however, that he (Jesse J. Johnson) was treated differently as a course writer GS-9 and based on the subleties surrounding his separation...the investigator concludes that these actions were racially motivated." Defendant continued race discrimination from the first date of reinstatement to date of involuntary retirement in July 1980.

d. As in Shaw v Library of Congress, the Fort Eustis promotion process and performance appraisals had not been validated and this caused adverse impact upon petitioner as a Black employee. Petitioner had been subjected to continuous disparate treatment as a Black employee for 10 to 13 years. The pretext of defendants at reconstruction, validation and correcting violations of the Army's own regulation was a rigged sham by defendants' witnesses who were

not qualified to make their statements or were either found guilty of race discrimination or were pending investigation, later found to be undocumented.

e. In addition, the Army has authority to promote petitioner to GS-12 due to the many violations of the Army's own regulations under non-racial authority in personnel regulation FPM 771.1 and 772, Grievance procedure (Code of Federal Reg. USC 5, Sect. 7501 et seq) and Fort Eustis Regulation TCFE 690-1, Chapter 7, Section IX, and X dated 28 May 1975 due to numerous violations of the Army's own regulations, which was cause, in part, for denial of petitioner's promotion. (See Expert Witness, Mrs. Clark's, affidavit App. E)

VI. ARGUMENT FOR QUESTION #6

1. The opinions and order of the 1980 (and 1976) court below have decided a question relating to promotion of a

Black federal employee in a way in which it conflicts with applicable decisions of this court in the midst of bias and prejudice of the court and the Army. (App. F and G)

2. Under the McDonald Douglas Corporation v. Green Standard (411 US 792 802, e 93S. Ct. 1817, 1824 (1973), petitioner proved that he belongs to the Black racial minority (age 62 at the time of application); that he applied and was Best Qualified with job-related civilian and military training, experience, education and background; that despite being "Best Qualified" he was discriminatorily underrated by the promotion panel and rejected; for the person promoted, ratings were inflated; petitioner's were diluted due to race.

3. The position remained open and was filled by a young white male, Mr. Richard Van Deren, age about 35 at the time of application, who was less quali-

fied by job-related training, experience, and background than petitioner; and but for the promotion panel's insertion of another qualifying 171 into his promotion file during the panel's deliberations and the unlawful raising of his ratings by Mr. B. B. Thornton, the Civilian Personnel Officers (CPO), and the many Army violations of its own promotion regulations due to race, petitioner would have been rated "Best Qualified" and promoted. (Expert Witness, Mrs. Clark's affidavit App. E) (Tr. 187-243) (Expert Witness, Dr. Carrington, Tr. 129-177)

4. Defendants and the court deliberately neglected to emphasize that the primary duty of the position is to write correspondence courses for home study so as to try to justify inflating Mr. Van Deren's ratings. Petitioner had 20 years Army service, 10 years Civil Service Course

writing experience in the position 300-76 to be filled; about 12 years personal study of correspondence study of reserve officers home study courses; six books, 14 editions, published about military history, used worldwide; and other qualifications, as stated in the Statement of the Case, prior to application. Mr. Van Deren had 1½ years Civil Service experience, no military experience, and no course writing experience. Rating his civilian background based primarily on his one quarter of ISD training in college was a pretext and was used to "screen out" petitioner unlawfully (App. E, Expert Witness). This same type denial of due process and equal protection, denial of Trial De Novo etc. occurred in the 1976 court action for promotion. (App. F and G)

5. The burden shifted to defendants to try to "articulate (or prove) some

legitimate reason for the employee's rejection." McDonald Douglas Corporation v. Green 411 US, 792, 8021 93 S. Ct. 1817, 1824 (1973), Furn Co Construction Corporation v. Waters, 438 US 567, 98 S. Ct. 2943 (1978). Generalized opinion regarding qualification of petitioner is insufficient to rebut a prima facie case (Gano v. Department of Development 16 FEP p 438, 443 (SD, Ohio 1977), especially by hostile discriminating witnesses who never evaluated petitioner's writing. Rigged statements.

6. The defendant failed miserably and dismally to articulate or prove its burden and efforts to do so were a sham. For example, defendants used Mrs. E. Throckmorton as an "expert" whose experiences, background, etc. were distorted and inflated. (App. E) She made statements without documentation. She said that Mr. Van Deren's late 171 was

an error of the Civilian Personnel officer; however, Mrs. E. Sims and Miss Hubbard, on the CPO staff, deny that they gave the panel his 171 (Agreed Exh. 5, Sub Exh O and P). She said that the so-called reconstruction based on Exhibits D-7, D-8, D-9 and D-10 was correct or harmless without any proof. Furthermore, these exhibits had been denied petitioner during discovery and were introduced by surprise over petitioner's objections. These were accepted by the court and used as a partial basis for the court's biased and prejudiced opinion and order.

7. The defendant's attorney used all retaliatory, hostile witnesses who had been found guilty of race discrimination against petitioner or who were found to have made undocumented statements or misrepresentations to aid and abet discriminating officials in the past and who had been promoted. He also took advantage of

petitioner's attorney who was denied time to read & orient himself on the case.

VII. ARGUMENT FOR QUESTION #7

1. WHETHER THE DISTRICT COURT MADE REVERSIBLE ERROR IN ACCEPTING A SURPRISE UNDOCUMENTED RIGGED ALLEGATION ABOUT NAPPING IN THE OFFICE BEFORE ADMINISTRATIVE EXHAUSTION, BY HOSTILE DISCRIMINATING WITNESSES TO DENY PETITIONER PROMOTION TO EDUCATION SPECIALIST GS 1710-12 IN VIOLATION OF PETITIONER'S RIGHTS UNDER DUE PROCESS, AND EQUAL PROTECTION UNDER THE 5th, 13th, and 14th AMENDMENTS OF THE U. S. CONSTITUTION.

2. Defendants attempt to carry its burden of proof to try to "articulate some legitimate excuse, non discriminatory reason" for petitioner's denial of promotion under McDonald Douglas vs Green standard was unconstitutional and legally a dismal failure. Defendants post trial

Brief is written to cloud the record and issue, undocumented, distorted; and based on hearsay, assumptions fabricated misrepresentations, retaliation, surprise subterfuge and hostile witnesses' statements who were found guilty of race discrimination. The courts opinion and order was based primarily on the similar violations as the post trial Brief.

3. Defendants' hostile witnesses were Mr. B. B. Thornton, Civilian Personnel Officer, Mrs. C. L. Cox, Senior Writer, Mr. Oben Johnson, former EEO officer, Fort Eustis, VA, Mrs. F. Perry, fellow writer, and LTC A. Hannum, supervisor and Mrs. M. Powers (fellow writer). Each witness made verbal, undocumented allegations without administrative exhaustion as required by Army and Civil Service Regulations. (See Fort Eustis Civilian Personnel Regulations, TCFE 690-1, Chapter 7, Section IX, and X)

Mrs. C. L. Cox and Mr. B. B. Thornton were found guilty of discrimination. Mrs. Perry was never petitioner's supervisor. LTC Hannum and Mrs. Powers were pending investigation and testified on hearsay, and numerous other fabricated distortions.

VII. ARGUMENT FOR QUESTION #8

1. HAS PETITIONER WHO WAS FORCED TO RETIRE DUE TO EXTREME NEAR-VIOLENT RACE DISCRIMINATION THE SAME RIGHTS AS A PRIVATE SECTOR EMPLOYEE FOR PUNITIVE, COMPENSATORY AND EMOTIONAL DAMAGES, BACK PAY, AND PROMOTIONS UNDER 42 USC 1981?

2. Since forced retirement, petitioner is in the private sector. In paragraph 21 of his original pro se complaint of February 80, petitioner alleged emotional and mental suffering and damages manifested physically due to extreme, continuous, systematic, near-violent and continuous race discrimination which is

not allowed under Title VII. However, Supreme Court Justice Stevens dissented; stated "...Congress intended federal employees to have the same rights available to remedy racial discrimination as employees in the private sector." Petitioner's case was unfairly delayed four years between 1972 and 1976 until Brown v. GSA was decided by the Supreme Court. Senator Williams agreed with Supreme Court Justice Stevens. (Senate Committee Report, S 2515, 92d Congress, 1st Session.

3. Brown v. GSA did not expressly decide the issue of Title VII exclusiveness but a factual situation of timely appeal (See 84 Harvard Law Review 1109-1304) and Johnson v. Railway Express Agency 421 US 454. Humphrey v. Portland Cement Co. (DC Tex 1973. 367 F. Supp. 832, 488 F. 2d 691 (5th Cir 1974),

(App. F and G).

IX. ARGUMENT FOR QUESTION #9

1. Did the judge's numerous mistatements of facts, distortions, etc. in his opinion and order and defendant's attorneys' deliberate mistatements of facts and distortions in the Post Trial Brief due to race of the petitioner violate petitioner's rights under due process and equal protection of the US Constitution so much so as to deny him promotion to GS-12? The opinion and order is without a factual base.

2. Their mistatements of facts, used as a primary basis for decision against petitioner are so numerous by the judge and the attorneys that it is impossible to list them in this brief petition. They are listed, in part, in petitioner's 30 or more page appeal brief to the Fourth Circuit Court which for brevity is not enclosed in appendix of this

petition.

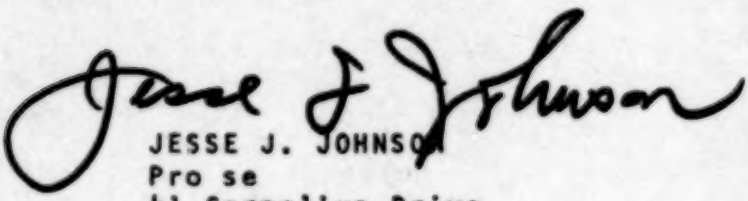
CONCLUSION

Petitioner, Jesse J. Johnson, pro se, respectfully prays that this honorable court considers the inherent and continuous injury and damages done by the Army and the court for 13 years against him in unconstitutionally denying him promotions, injunctive relief, due process and equal protection against intentional, continuous, and systematic race discrimination which resulted in emotional distress, extreme mental agony, humiliation, pain and suffering and physical damage and operations; and that for reasons set forth herein, respectfully urge that this petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit be granted and that, under the honorable concept of "Equal Justice under the Law"

that the Opinion and Order of the Circuit Court and District Court be reversed so that petitioner can be promoted to Educational Specialist GS 1710-12, or equivalent position for which he is qualified, with back pay, grade and allowances and injunctive relief, or back pay and promotion to GS-12 without a formal finding of race discrimination under the Shaw v Library of Congress decision and EEOC policy, or, as an alternate remand in part and reverse in part and grant petitioner permission to amend his original complaint, if necessary, to include compensatory and punitive damages, humiliation, emotional stress, pain and suffering continually by the Army, and bias and prejudice of the court, and an order for a change of venue, preferably to a District Court in the District Court of Washington, D. C. and that this honorable court remand

this matter to the District Court for an award of attorney fees (pro se) and personal expenses.

Respectfully submitted



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CERTIFICATE OF SERVICE

I hereby certify that I have served three (3) copies each of this Petition for a writ of Certiorari upon counsel of record to the Respondent attorney, Michael A. Rhine, Assistant U. S. Attorney, P. O. Box 60, Norfolk, VA 23501 and Attorney Peter B. Lowenberg, HQDA DAJA-LTC Room 2D437, Pentagon, Washington, D. C. 20310 by depositing same as certified mail in a United States post office with first class postage prepaid as set forth above on or before September 25, 1982.

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